

VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR MAY 24th, 2005

**Re-Adoption:
Proposed Regulation Governing Financial Responsibility of
Boiler and Pressure Vessel Contract Fee Inspectors**

I. Action Requested.

The Boiler Safety Compliance Program of the Department of Labor and Industry requests the Safety and Health Codes Board to consider for adoption as a proposed regulation of the Board the attached revised draft regulation governing the financial responsibility of boiler and pressure vessel contract fee inspectors and to repeal the existing proposed regulation previously adopted by the Board.

II. Summary of the Revised Proposed Regulation.

The revised proposed regulation changes none of the intent of the original proposed regulation adopted by the Board at its meeting on August 3, 2004 which required contract fee inspectors operating in the Commonwealth to demonstrate financial responsibility for bodily injury and property damage resulting from, or directly relating to, an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel. As before, financial responsibility in the form of insurance, guaranty, surety, or self-insurance will be required as follows:

Aggregate limits of \$500,000 for any contract fee inspector with less than 1% market share; \$1 million for those with 1% up to and including 10% market share; and \$2 million for those with more than 10% market share or any contract fee inspector that employs or has an arrangement with other contract fee inspectors.

The major changes in this revision include an amended definition of "market share" and the addition of a definition for "contract fee inspection agency." Further clarified is the coverage when a contract fee inspector is working for a contract fee inspection company, as well as to how the aggregate limits apply to contract fee inspection companies. Minor changes correct errors of grammar and punctuation.

III. Basis, Purpose and Impact of the Proposed Rulemaking.

A. Basis.

The Safety and Health Codes Board is authorized by Title 40.1-51.9:2 C of the *Code of Virginia* to, "...promulgate regulations requiring contract fee inspectors, as a condition of

their doing business in the Commonwealth, to demonstrate financial responsibility sufficient to comply with the requirements of this chapter. Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified.” (§ 40.1-51.9:2. of the Code of Virginia, *Financial Responsibility Requirements for Contract Fee Inspectors*, is contained in Appendix “A.”)

B. Purpose.

Intent of the Proposed Regulation.

As before, the purpose of the proposed regulation is to set minimum aggregate limits for coverage or other means provided for in the *Code of Virginia* and approved by the Board to ensure the financial responsibility of boiler and pressure vessel contract fee inspectors operating in the Commonwealth. The intent of this financial responsibility is to assure additional protection to the public, including compensation to third parties, in cases where there is bodily injury and property damage resulting from, or directly relating to, a contract fee inspector’s negligent inspection or recommendation for certification of a boiler or pressure vessel.

Reason for the Revision

The previously proposed regulation, adopted by the Board at its August 3, 2004 meeting, was not approved by the Department of Planning and Budget. The Department, which is charged to review and approve all regulations to be promulgated, determined that the proposed regulation as adopted by the Board, failed to take into account the type capacity and number of boilers inspected in the determination of “market share” as well minor grammatical or technical writing deficiencies.

C. Impact on Contract Fee Inspectors.

Unchanged from the August 3, 2004 proposal. Contract fee inspectors would be required to indemnify boiler and pressure vessel owners for any bodily injury and property damage resulting from or directly related to an inspector’s negligent inspection or recommendation for certification of a boiler or pressure vessel. Contract fee inspectors would be required to provide documentation of their means of indemnification at the time of their certification or before performing inspections and at renewal of the instrument of insurance, guaranty, surety or self-insurance.

D. Impact on Boiler or Pressure Vessel Owners.

Unchanged from the August 3, 2004 proposal. It is anticipated that any additional costs to the contract fee inspector, as a result of the requirements of this regulation, would be passed on to the boiler or pressure vessel owner, who is the end user of the service.

E. Impact on Employers and Employees.

Unchanged from the August 3, 2004 proposal. Employers, employees, and the general public would be compensated up to the level of the required financial responsibility in cases of bodily injury and property damage resulting from or directly related to a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

F. Impact on the Department of Labor and Industry.

No significant impact on the Department is anticipated beyond the cost to promulgate the regulation.

G. Technological Feasibility.

There are no technological feasibility issues associated with this regulation.

H. Benefit/Cost.

Unchanged from the August 3, 2004 proposal. The benefit of these changes would be to ensure a minimum level of indemnification in cases involving bodily injury and property damage resulting from, or directly relating to, a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

The financial responsibility requirements would cost contract fee inspectors approximately \$7,500 - \$10,000 per year. It is anticipated that the costs would be passed on to the boiler or pressure vessel owner, who is the end user of the service.

Individual property damage costs from boiler or pressure vessel incidents in Virginia during the past three years have ranged from \$300,000 to \$500,000. The proposed requirements would indemnify contract fee inspectors from potential lawsuits to the level of their coverage. The financial responsibility would also give contract fee inspectors a vested interest in the performance of the inspections they conduct.

IV. Implementation Schedule.

Not applicable. The revised draft is being offered as a proposed regulation of the Board for public comment and is not being considered as final regulatory language at this time.

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APPENDIX “A”

Enabling Statute from the Code of Virginia Authorizing Regulatory Action by the Board.

§ 40.1-51.9:2. Financial responsibility requirements for contract fee inspectors.

- A. Contract fee inspectors inspecting or certifying regulated boilers or pressure vessels in the Commonwealth shall maintain evidence of their financial responsibility, including compensation to third parties, for bodily injury and property damage resulting from, or directly relating to, an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.
- B. Documentation of financial responsibility, including documentation of insurance or bond, shall be provided to the Chief Inspector within thirty days after certification of the inspector. The Chief Inspector may revoke an inspector's certification for failure to provide documentation of financial responsibility in a timely fashion.
- C. The Safety and Health Codes Board is authorized to promulgate regulations requiring contract fee inspectors, as a condition of their doing business in the Commonwealth, to demonstrate financial responsibility sufficient to comply with the requirements of this chapter. Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified.
- D. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any other method approved by the Board, or any combination thereof, under the terms the Board may prescribe. A contract fee inspector whose financial responsibility is accepted by the Board under this subsection shall notify the Chief Inspector at least thirty days before the effective date of the change, expiration, or cancellation of any instrument of insurance, guaranty or surety.
- E. Acceptance of proof of financial responsibility shall expire on the effective date of any change in the inspector's instrument of insurance, guaranty or surety, or the expiration date of the inspector's certification. Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration.
- F. The Chief Inspector, after notice and opportunity for hearing, may revoke his acceptance of evidence of financial responsibility if he determines that acceptance has been procured by fraud or misrepresentation, or a change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.
- G. It is not a defense to any action brought for failure to comply with the requirement to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the owner or operator of an inspected boiler or pressure vessel

possessed evidence of financial responsibility accepted by the Chief Inspector or the Board. (1996, c. 294.)

RECOMMENDED ACTION

The Boiler Safety Compliance Program recommends that the Safety and Health Codes Board adopt the amended proposed contract fee inspector financial responsibility regulation as a proposed regulation of the Board, as authorized by §§ 40.1-51.9:2 C. and 40.1-51.6., and rescind the previous version adopted at the August 3, 2004 meeting.

The Department also recommends that the Board state in any motion it may make to promulgate this regulation that it will receive, consider and respond to petitions by any interested persons at any time to reconsider or revise the proposed regulation to be adopted in accordance with the Administrative Process Act.

**16 VAC 25-55, Financial Requirements for Boiler and Pressure Vessel Contract
Fee Inspectors**

As Adopted by the
Safety and Health Codes Board

Date: May 24, 2005



BOILER SAFETY COMPLIANCE PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

16 VAC 25-55, Financial Requirements for Boiler and Pressure Vessel Contract Fee Inspectors